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2003 FEB 26 PM 3 59
TN REGULATORY AUTHORITY
DOCKET ROOM

February 26, 2003

VIA HAND DELIVERY

Ms. Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

Re: *Small Telephone Companies Tariff Filings Regarding Reclassifications of Pay Telephone Service as Required by Federal Communications Commission (FCC) Docket 96-128, TRA Docket No. 97-01181*

Dear Chairman Kyle:

Pursuant to the January 27, 2003 Directors' Conference, enclosed please find the original and 13 copies of the Brief of Coalition of Tennessee Small Local Exchange Companies Regarding the Requirements of and Compliance with 47 U.S.C. § 276(b)(1)(B) for filing in the above-referenced docket. Also enclosed is an additional copy of the Brief, which I would appreciate your stamping as "filed," and returning to me by way of our courier.

Should you have any questions with respect to this filing, please do not hesitate to contact me at the telephone number listed above.

Very truly yours,



R. Dale Grimes

RDG/gci
Enclosures

cc: Certificate of Service List
Lynn Questell, Esq. (via hand-delivery)
Mr. Bruce H. Mottern
Ms. Desda Hutchins
Mr. Gregory Eubanks
Mr. Herb Bivens
Ms. Susan W. Smith
Mr. Terry M. Wales

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

*03 FEB 26 PM 3 59

IN RE:)
)
SMALL TELEPHONE COMPANIES)
TARIFF FILINGS REGARDING)
RECLASSIFICATION OF PAY TELEPHONE)
SERVICE AS REQUIRED BY FEDERAL)
COMMUNICATIONS COMMISSION (FCC))
DOCKET 96-128)

TN REGULATORY AUTHORITY
DOCKET ROOM

Docket No. 97-01181

**BRIEF OF COALITION OF TENNESSEE SMALL LOCAL EXCHANGE
COMPANIES REGARDING THE REQUIREMENTS OF AND
COMPLIANCE WITH 47 U.S.C. § 276(b)(1)(B)**

The Coalition of Tennessee Small Local Exchange Companies (the "Coalition")¹ hereby responds to the order of the Tennessee Regulatory Authority ("TRA"), issued at a Directors' Conference held on January 27, 2003, requiring the parties in this Docket to address the following questions: (1) does 47 U.S.C. § 276(b)(1)(B) require cost-based rates, and (2) have the previous actions of the TRA removing subsidies satisfied the requirements of 47 U.S.C. § 276(b)(1)(B)? The TRA has already found, based upon prior orders of the Federal Communications Commission ("FCC"), that the other provisions of 47 U.S.C. § 276 do not apply to non-BOC LEC's such as the members of the Coalition. However, pursuant to footnote 80 in the FCC's order in *In the Matter of Wisconsin Public Service Commission Order Directing Filings*, CPD No. 00-01 (Memorandum Opinion and Order) (January 31, 2002), the TRA

¹ The Coalition consists of the following companies: (1) Ardmore Telephone Company, Inc.; (2) the CenturyTel, Inc. Companies in Tennessee consisting of (a) CenturyTel of Adamsville, Inc., (b) CenturyTel of Claiborne, Inc., and (c) CenturyTel of Ooltewah-Collegedale, Inc.; (3) Loretto Telephone Company, Inc.; (4) the TDS Telecom Companies in Tennessee consisting of (a) Concord Telephone Exchange, Inc., (b) Humphreys County Telephone Company, (c) Tellico Telephone Company, Inc., and (d) Tennessee Telephone Company; (5) the Telephone and Electronics Corp. ("TEC") Companies in Tennessee consisting of (a) Crockett Telephone Company, Inc., (b) Peoples Telephone Company, Inc., and (c) West Tennessee Telephone Company, Inc.; (6) United Telephone Company, Inc.; and (7) Millington Telephone Company, Inc.

determined that subsection (b)(1)(B) is applicable in this docket.² In response to the questions to be briefed herein, it is the position of the Coalition that 47 U.S.C. § 276(b)(1)(B) does not require cost-based rates, and that the specified prior actions of the TRA removing subsidies has fully satisfied the requirements of that subsection.

A. 47 U.S.C. § 276(b)(1)(B) Does Not Require The Coalition Members To Implement Cost-Based Rates.

Section § 276(b)(1)(B) does not require local exchange carriers (“LECs”) that are not Bell Operating Companies (“BOCs”) to implement cost-based rates. This answer is based upon the express wording of the statute and the FCC’s Orders implementing and interpreting the statute.

First, the plain language of § 276(b)(1)(B) clearly shows that it does not apply to *rates* of any kind, cost-based or otherwise. Section 276(b)(1) requires the FCC to prescribe regulations that:

- (A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation;
- (B) discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on such date of enactment and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a compensation plan as specified in subparagraph (A);
- (C) prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a) of this section, which safeguards shall, at a minimum, include the nonstructural

² The FCC stated that § 276(b)(1)(B) is “somewhat broader than § 276(a)(1) because it applies to all LECs and is not limited to only BOCs, as is § 276(a)(1).” *In the Matter of Wisconsin Public Service Commission Order Directing Filings*, CPD No. 00-01 (Memorandum Opinion and Order, ¶ 34, n.80).

safeguards equal to those adopted in the Computer Inquiry-III (FCC Docket No. 90-623) proceeding;

- (D) provide for Bell operating company payphone service providers to have the same right that independent payphone providers have to negotiate with the location provider on the location providers selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry intra-LATA calls from their payphones, unless the Commission determines in the rule making pursuant to the section that it is not in the public interest; and
- (E) provide for all payphone service providers to have the right to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry intra-LATA calls from their payphones.

Thus, § 276(b)(1)(B) only applies to *subsidies, not rates*. Specifically, the section requires the FCC to prescribe rules that, in effect, will eliminate subsidies, including the interstate carrier access charge payphone service elements (i.e., the Carrier Common Line elements), that “formerly supported the LEC-owned payphone system.” *In the Matter of Wisconsin Public Service Commission Order Directing Filings*, CPD No. 00-01 (Memorandum Opinion and Order, ¶¶ 34, 35) (January 31, 2002).

By contrast, § 276(b)(1)(C), which applies exclusively to BOCs, is the subsection that the FCC has interpreted as requiring cost-based *rates* for payphone line services. That subsection is the authority for the imposition of the new services test to establish those cost-based rates. *In the Matter of Wisconsin Public Service Commission Order Directing Filings*, CPD No. 00-01 (Memorandum Opinion and Order, ¶ 12) (January 31, 2002). As the FCC has specifically found, it has no jurisdiction over the payphone line rates of non-BOC LECs. *Id.*, at ¶ 31. Accordingly, a plain reading of the statute reveals that § 276(b)(1)(B) is only directed to subsidies, which

includes carrier access charges and subsidies in basic exchange and exchange access revenues of payphones, not pay phone rates.

Second, § 276(b)(1)(B) only requires that the FCC prescribe regulations with respect to certain subsidies. It does not require anything else. The FCC has recently explained how it discharged this responsibility:

To discontinue access charges and subsidies under section 276(b)(1)(B), we concluded that, in order to receive compensation for completed calls originating from its payphones, a LEC PSP “must be able to certify” that it has complied with several requirements, including the institution of “effective intrastate tariffs reflecting the removal of charges that recover the costs of payphones and any intrastate [payphone] subsidies.” We also required that all incumbent LEC payphones be treated as deregulated and detariffed customer premises equipment (CPE).

In the Matter of Wisconsin Public Service Commission Order Directing Filings, CPD No. 00-01 (Memorandum Opinion and Order, ¶ 11) (January 31, 2002). Again, this clearly establishes that § 276(b)(1)(B) has nothing to do with rates. Notably, the requirements set forth by the FCC for compliance with § 276(b)(1)(B) would not apply to any incumbent LEC that is not now in the payphone business as a payphone service provider (“PSP”).

B. The TRA’s Previous Actions Have Satisfied The Requirements of 47 U.S.C. § 276(b)(1)(B).

In response to the enactment of § 276 and the FCC’s implementing Orders, the TRA opened Docket No. 97-00409 in April 1997. As part of that Docket, the TRA entered an Order approving, pending the outcome of the contested case, proposed tariffs submitted by incumbent LECs that among other things “remove subsidies from other classes of service.” *In Re Tariff Filings By Local Exchange Companies To Comply With FCC Order 96-439, Concerning The Reclassification Of Pay Telephones*, Docket No. 97-00409 (Order Granting Intervention of the Consumer Advocate, Appointing a Hearing Officer And Approving Tariffs For Reclassification

Of Pay Telephones, at 1-2) (May 2, 1997)(attached hereto as Exhibit A). The tariffs filed by the LECs revealed that subsidies existed in the Carrier Common Line ("CCL") charges of certain members of the Coalition.³ Pursuant to the Order, the CCL rates of those identified companies were reduced to remove the payphone element. Since the removal of subsidies is the only aim of § 276(b)(1)(B), this action fully satisfied that purpose. In addition, the Coalition members also deregulated their payphone services and concurred in the tariffs filed with the FCC by the National Exchange Carrier Association ("NECA"). These actions eliminated any existing subsidies in the Coalition members' payphone operations.

The TRA's May 2, 1997 Order was entered pending the outcome of the Docket. It was anticipated that other actions may be required in order to comply with § 276. That has been accomplished by the TRA in Docket No. 97-00409 with respect to the large LECs. Meanwhile, Docket No. 97-01181 was commenced as a separate proceeding for purposes of determining compliance with § 276 by the small LECs.⁴ Now that the FCC has clearly held that non-BOC LECs are not required to implement cost-based rates under § 276, the actions of the Coalition members in filing tariffs, reducing CCL charges where a payphone subsidy was identified, deregulating their payphone services and concurring in the NECA tariffs filed with the FCC, have more than satisfied the mandate of § 276(b)(1)(B) to eliminate subsidies.

³ The Coalition members identified as having subsidies in their CCL rates were TDS Telephone Companies in Tennessee and United Telephone Company, Inc. *In Re Tariff Filings By Local Exchange Companies To Comply With FCC Order 96-439, Concerning The Reclassification Of Pay Telephones*, Docket No. 97-00409 (Order Granting Intervention of the Consumer Advocate, Appointing a Hearing Officer And Approving Tariffs For Reclassification Of Pay Telephones, at 2).

⁴ Specifically, Docket No. 97-01181 was established and maintained so that these small rate-of-return companies would be "spared the expense of preparing and producing cost studies for the sole purpose of establishing pay telephone rates." See *Order of Pre-Hearing Officer Continuing Separation of the Docket No. 97-01181, Granting the Tennessee Small Local Exchange Companies Coalition's Petition to Intervene in Docket No. 97-00409*, TRA Dockets No. 97-00409 and 97-01181 (July 31, 2000).

C. Conclusion.

For all the foregoing reasons, the Coalition respectfully submits that 47 U.S.C. § 276(b)(1)(B) does not require cost-based rates. Rather, the provision only requires the removal of carrier access charge payphone service elements and payments in effect on the date § 276 was enacted, and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues pursuant to regulations prescribed by the FCC. The actions of the TRA, and the Coalition's compliance with the TRA's rulings, have fully satisfied the mandate of § 276(b)(1)(B). Accordingly, the Coalition respectfully requests the TRA to dismiss this Docket in order to spare them the further burden and expense of regulatory proceedings on this issue.

Dated: February 26, 2002.

Respectfully submitted,



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*Attorneys for the Coalition of Tennessee
Small Local Exchange Companies*

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Brief of Coalition of Tennessee Small Local Exchange Companies Regarding the Requirements of and Compliance with 47 U.S.C. § 276(b)(1)(B), has been served on the following, via United States mail, postage prepaid, this the 26th day of February 2003:

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BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 2, 1997



IN RE: TARIFF FILINGS BY LOCAL EXCHANGE COMPANIES TO
COMPLY WITH FCC ORDER 96-439, CONCERNING THE
RECLASSIFICATION OF PAY TELEPHONES

DOCKET NO. 97-00409

ORDER GRANTING INTERVENTION OF THE CONSUMER ADVOCATE,
APPOINTING A HEARING OFFICER AND APPROVING TARIFFS FOR
RECLASSIFICATION OF PAY TELEPHONES

This matter is before the Tennessee Regulatory Authority (here "Authority") upon receipt of the above captioned tariff filings by the Incumbent Local Exchange Companies (here "ILEC's"). Each of the ILEC's and its respective tariff number are enumerated in footnote one.¹ These proposed tariffs deregulate payphone service, offer central office functions to make a "dumb" phone equivalent to a "smart" phone, make available on a nondiscriminatory basis to all payphone providers any features or functions that the ILEC's offer to

¹ Tariff 97-011 Citizens Telecomm of TN
Tariff 97-061 Peoples Telephone
Tariff 97-063 West TN Telephone
Tariff 97-065 Ooltewah-Collegedale
Tariff 97-080 Ardmore Telephone
Tariff 97-012 Citizens Tel. of the Vol State

97-121 United Telephone
97-062 Crockett Telephone
97-064 Claiborne Telephone
97-066 Adamsville Telephone
97-089 Loretto Telephone
97-107 Millington Telephone

THE FOLLOWING TELEPHONE DATA SYSTEMS (TDS) COMPANIES:

Tariff 97-070 Tennessee Telephone
Tariff 97-069 Humphreys County Tel.

97-071 Concord Telephone
97-068 Tellico Telephone

EXHIBIT

A

its own payphones, and remove the subsidies to payphone operations from other classes of service. The proposed effective date of these tariffs is April 15, 1997. Three entities, Citizens Telephone of the Volunteer State, United Telephone and the TDS Companies (Concord, Humphreys, Tellico, Tennessee Telephone) identified subsidies to payphone operations of \$28,900, \$11,400 and \$81,700, respectively. Citizens Telephone of the Volunteer State and United Telephone filed appropriate tariffs to remove their respective subsidies from other classes of service. However, the TDS Companies refused to file tariffs to remove the payphone subsidy from other classes of service for several reasons. The remaining ILECs determined that there was no material subsidy to payphones from other classes of service.

On April 14, 1997, the Consumer Advocate Division, Office of the Attorney General (here "Consumer Advocate") filed a petition to intervene in Docket Number 97-00346. Since that docket has already been consolidated herein, the Consumer Advocate's Petition will be treated as though filed in this Docket. The Consumer Advocate agreed to waive notice so that its Petition to Intervene could be considered at this Conference. Further, the Consumer Advocate's intervention requests the Authority to convene a contested case proceeding to determine whether the proposed tariffs are just and reasonable and whether the filings comply with the Federal Telecommunications Act of 1996, and with the Order issued by the Federal Communications Commission (here "FCC") in Docket No. 96-128. The intervention, as filed by the Consumer Advocate, does

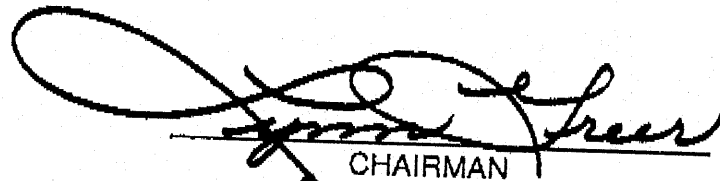
not request that the tariffs be suspended, since the above captioned tariffs must become effective April 15, 1997, pursuant to the FCC Order.

The Authority considered this matter at its regularly scheduled Conference held on April 15, 1997. Upon consideration of the entire record in this matter, the Directors unanimously determined that the intervention request of the Consumer Advocate should be granted; that Chairman H. Lynn Greer be appointed as a Hearing Officer to preside over a pre-hearing conference to be set after consultation with the parties herein; and that pending the outcome of the contested case the tariffs are approved as filed. Additionally, the Directors, after considering the reasons given by TDS for not filing appropriate tariffs, voted unanimously to require TDS to reduce rates \$81,700 to remove the existing subsidy to payphone operations.

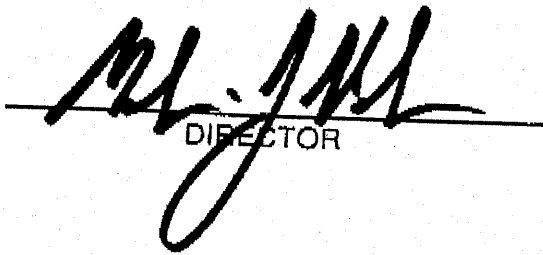
IT IS THEREFORE ORDERED:

1. That the tariff filings by all the Incumbent Local Exchange Companies listed in footnote 1 herein, effective April 15, 1997, are hereby approved pending the outcome of the contested case;
2. That Telephone Data Systems reduce its rates \$81,700 to eliminate the estimated subsidy to pay telephones from regulated services revenues;

3. That Chairman H. Lynn Greer serve as a Hearing Officer to preside over a pre-hearing conference which shall be set after consultation with the parties herein;
4. That the Petition to Intervene of the Consumer Advocate Division, Office of the Attorney General filed on April 14, 1997, is hereby approved;
5. That any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order; and
6. That any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Division, within sixty (60) days from and after the date of this Order.


CHAIRMAN


DIRECTOR


DIRECTOR

ATTEST:


EXECUTIVE SECRETARY